

the fiscal year beginning October 1, 1981. The social services block grant and the low-income home energy assistance program are not subject to the provisions of this subpart.

§ 96.111 Continuation of pre-existing regulations.

The regulations previously issued by the Department and the Community Services Administration to govern administration of the programs replaced by the block grants specified in § 96.1 of this part shall continue in effect until revised to govern administration of those programs by the Department in those circumstances in which States have not qualified for block grants.

§ 96.112 Community services block grant.

(a) For the fiscal year beginning October 1, 1981, only, a State may choose to operate programs under the community services block grant or, instead, have the Secretary operate the programs replaced by the block grant. If a State does not notify the Secretary in accordance with the statutory deadlines each quarter, it will be deemed to have requested the Secretary to operate the programs for the following quarter.

(b) A State or territory that does not have any eligible entity" as that term is defined in section 673(1) of the Reconciliation Act (42 U.S.C. 9902), as amended by section 17 of Pub. L. 97-115 (December 19, 1981), or any other entity for which funding is allowed under section 138 of Pub. L. 97-276, may distribute its allotment for the Fiscal Year beginning October 1, 1982 according to section 675(c)(2)(A)(ii) of the Reconciliation Act.

(c) For any quarter in which the Secretary administers the programs, the Department's administration costs will be deducted from the State's allotment. The Department's total administration costs for making grants during fiscal year 1982 and for any monitoring of these grants in fiscal year 1983 will be deducted from each State's allotment in proportion to the total amount of grants awarded from the allotment during the period of administration by the Department (but not to exceed 5

percent of the State's fiscal year 1982 allotment).

[47 FR 29486, July 6, 1982, as amended at 48 FR 9271, Mar. 4, 1983]

Subpart L—Substance Abuse Prevention and Treatment Block Grant

AUTHORITY: 42 U.S.C. 300x-21 to 300x-35 and 300x-51 to 300x-64.

SOURCE: 58 FR 17070, Mar. 31, 1993, unless otherwise noted.

§ 96.120 Scope.

This subpart applies to the Substance Abuse Prevention and Treatment Block Grant administered by the Substance Abuse and Mental Health Services Administration. 45 C.F.R. Part 96, subparts A through F, are applicable to this subpart to the extent that those subparts are consistent with subpart L. To the extent subparts A through F are inconsistent with subpart L, the provisions of subpart L are applicable.

§ 96.121 Definitions.

Block Grant means the Substance Abuse Prevention and Treatment Block Grant, 42 U.S.C. 300x-21, *et seq.*

Early Intervention Services Relating to HIV means:

(1) appropriate pretest counseling for HIV and AIDS;

(2) testing individuals with respect to such disease, including tests to confirm the presence of the disease, tests to diagnose the extent of the deficiency in the immune system, and tests to provide information on appropriate therapeutic measures for preventing and treating the deterioration of the immune system and for preventing and treating conditions arising from the disease;

(3) appropriate post-test counseling; and

(4) providing the therapeutic measures described in Paragraph (2) of this definition.

Fiscal Year, unless provided otherwise, means the Federal fiscal year.

Interim Services or Interim Substance Abuse Services means services that are provided until an individual is admitted to a substance abuse treatment program. The purposes of the services are to reduce the adverse health effects

of such abuse, promote the health of the individual, and reduce the risk of transmission of disease. At a minimum, interim services include counseling and education about HIV and tuberculosis (TB), about the risks of needle-sharing, the risks of transmission to sexual partners and infants, and about steps that can be taken to ensure that HIV and TB transmission does not occur, as well as referral for HIV or TB treatment services if necessary. For pregnant women, interim services also include counseling on the effects of alcohol and drug use on the fetus, as well as referral for prenatal care.

Primary Prevention Programs are those directed at individuals who have not been determined to require treatment for substance abuse. Such programs are aimed at educating and counseling individuals on such abuse and providing for activities to reduce the risk of such abuse.

Principal Agency is the single State agency responsible for planning, carrying out and evaluating activities to prevent and treat substance abuse and related activities.

Rural Area The definition of a rural area within a State shall be the latest definition of the Bureau of the Census, Department of Commerce.

Secretary is the Secretary of the United States Department of Health and Human Services or the Secretary's designee.

State, unless provided otherwise, includes the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, America Samoa, the Commonwealth of the Northern Mariana Islands, Palau, Micronesia, and the Marshall Islands.

State Medical Director for Substance Abuse Services is a licensed physician with the knowledge, skill and ability to address the multiple physical and psychological problems associated with substance abuse, and who provides the principle agency with clinical consultation and direction regarding effective substance abuse treatment, effective primary medical care, effective infection control and public health and quality assurance.

Substance Abuse is defined to include the abuse or illicit use of alcohol or other drugs.

Tuberculosis Services means:

- (1) Counseling the individual with respect to tuberculosis;
- (2) Testing to determine whether the individual has been infected with mycobacteria tuberculosis to determine the appropriate form of treatment for the individual; and
- (3) Providing for or referring the individuals infected by mycobacteria tuberculosis for appropriate medical evaluation and treatment.

§96.122 Application content and procedures.

(a) For each fiscal year, beginning with fiscal year 1993, the State shall submit an application to such address as the Secretary determines is appropriate.

(b) For fiscal year 1993, applicants must submit an application containing information which conforms to the assurances listed under §96.123, the report as provided in §96.122(f), and the State plan as provided in §96.122(g).

(c) Beginning fiscal year 1994, applicants shall only use standard application forms prescribed by the granting agency with the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. Applicants must follow all applicable instructions that bear OMB clearance numbers. The application will require the State to submit the assurances listed under §96.123, the report as provided in §96.122(f), and the State Plan as provided in §96.122(g).

(d) The application (in substantial compliance with the statutory and regulatory provisions for the Block Grant) shall be submitted for fiscal year 1993 no later than ninety days after publication of these regulations, and, for subsequent years, no later than March 31 of the fiscal year for which the State is applying.

(e) The funding agreements and assurances in the application shall be made through certification by the State's chief executive officer personally, or by an individual authorized to make such certification on behalf of the chief executive officer. When a delegation has occurred, a copy of the current delegation of authority must be submitted with the application.

(f) A report shall be submitted annually with the application and State Plan. Among other things, the report must contain information as determined by the Secretary to be necessary to determine the purposes and the activities of the State, for which the Block Grant was expended. The report shall include (but is not limited to) the following:

(1) For the fiscal year three years prior to the fiscal year for which the State is applying for funds:

(i) A statement of whether the State exercised its discretion under applicable law to transfer Block Grant funds from substance abuse services to mental health services or vice versa, and a description of the transfers which were made;

(ii) A description of the progress made by the State in meeting the prevention and treatment goals, objectives and activities submitted in the application for the relevant year;

(iii) A description of the amounts expended under the Block Grant by the State agency, by activity;

(iv) A description of the amounts expended on primary prevention and early intervention activities (if reporting on fiscal years 1990, 1991, and 1992 only) and for primary prevention activities (if reporting on fiscal years 1993 and subsequent years);

(v) A description of the amounts expended for activities relating to substance abuse such as planning, coordination, needs assessment, quality assurance, training of counselors, program development, research and development and the development of information systems;

(vi) A description of the entities, their location, and the total amount the entity received from Block Grant funds with a description of the activities undertaken by the entity;

(vii) A description of the use of the State's revolving funds for establishment of group homes for recovering substance abusers, as provided by § 96.129, including the amount available in the fund throughout the fiscal year and the number and amount of loans made that fiscal year;

(viii) A detailed description of the State's programs for women and, in particular for pregnant women and

women with dependent children, if reporting on fiscal years 1990, 1991, or 1992; and pregnant women or women with dependent children for fiscal year 1993 and subsequent fiscal years;

(ix) A detailed description of the State's programs for intravenous drug users; and

(x) For applications for fiscal year 1996 and subsequent fiscal years, a description of the State's expenditures for tuberculosis services and, if a designated State, early intervention services for HIV.

(2) For the most recent 12 month State expenditure period for which expenditure information is complete:

(i) A description of the amounts expended by the principal agency for substance abuse prevention and treatment activities, by activity and source of funds;

(ii) A description of substance abuse funding by other State agencies and offices, by activity and source of funds when available; and

(iii) A description of the types and amounts of substance abuse services purchased by the principal agency.

(3) For the fiscal year two years prior to the fiscal year for which the State is applying for funds:

(i) A description of the amounts obligated under the Block Grant by the principal agency, by activity;

(ii) A description of the amounts obligated for primary prevention and early intervention (if reporting on fiscal years 1990, 1991, and 1992 activities only) and primary prevention activities (if reporting on fiscal years 1993 and subsequent year activities);

(iii) A description of the entities to which Block Grant funds were obligated;

(iv) A description of the State's policies, procedures and laws regarding substance abuse prevention, especially the use of alcohol and tobacco products by minors;

(v) For applications for fiscal year 1995 and all subsequent fiscal years, a description of the State's procedures and activities undertaken to comply with the requirement to conduct independent peer review as provided by § 96.136;

(vi) For applications for fiscal year 1995 and all subsequent fiscal years, a

description of the State's procedures and activities undertaken to comply with the requirement to develop capacity management and waiting list systems, as provided by §§96.126 and 96.131, as well as an evaluation summary of these activities; and

(vii) For applications for fiscal year 1995 and subsequent fiscal years, a description of the strategies used for monitoring program compliance with §96.126(f), §96.127(b), and §96.131(f), as well as a description of the problems identified and the corrective actions taken.

(4) The aggregate State expenditures by the principle agency for authorized activities for the two State fiscal years preceding the fiscal year for which the State is applying for a grant, pursuant to §96.134(d).

(5) For the previous fiscal year:

(i) A description of the State's progress in meeting the goals, objectives and activities included in the previous year's application, and a brief description of the recipients of the Block Grant funds;

(ii) A description of the methods used to calculate the following:

(A) The base for services to pregnant women and women with dependent children as required by §96.124;

(B) The base for tuberculosis services as required by §96.127; and

(C) For designated States, the base for HIV early intervention services as required by §96.128;

(iii) For applications for fiscal years 1994 and 1995 only, a description of the State's progress in the development of protocols for and the implementation of tuberculosis services, and, if a designated State, early intervention services for HIV; and

(iv) For applications for fiscal year 1994 only, a description of the States progress in the development, implementation, and utilization of capacity management and waiting list systems.

(6) For the first applicable fiscal year for which the State is applying for a grant, a copy of the statute enacting the law as described in §96.130(b) and, if the State desires, a description of the activities undertaken during the previous fiscal year to enforce any law against the sale or distribution of tobacco products to minors that may

have existed; and for subsequent fiscal years for which the State is applying for a grant, the annual report as required by §96.130(e) and any amendment to the law described in §96.130(b).

(7) In addition to the information above, any information that the Secretary may, from time to time, require, consistent with the Paperwork Reduction Act.

(g) For each fiscal year, beginning fiscal year 1993, the State Plan shall be submitted to the Secretary and shall include the following:

(1) For fiscal years 1993 and 1994, a statement on whether the Governor intends to exercise discretion under applicable law to transfer Block Grant funds from the Substance Abuse Prevention and Treatment Block Grant allotment under section 1921 of the PHS Act to the Community Mental Health Services Block Grant allotment under section 1911 of the PHS Act or vice versa and a description of the planned transfer;

(2) A budget of expenditures which provides an estimate of the use and distribution of Block Grant and other funds to be spent by the agency administering the Block Grant during the period covered by the application, by activity and source of funds;

(3) A description of how the State carries out planning, including how the State identifies substate areas with the greatest need, what process the State uses to facilitate public comment on the plan, and what criteria the State uses in deciding how to allocate Block Grant funds;

(4) A detailed description of the State procedures to monitor programs that reach 90% capacity pursuant to §96.126(a);

(5) A detailed description of the State procedures to implement the 14/120 day requirement provided by §96.126(b) as well as the interim services to be provided and a description of the strategies to be used in monitoring program compliance in accordance with §96.126(f);

(6) A full description of the outreach efforts States will require entities which receive funds to provide pursuant to §96.126(e);

(7) A detailed description of the State procedures implementing TB services

pursuant to §96.127, and a description of the strategies to be used in monitoring program compliance in accordance with §96.127(b);

(8) A detailed description of the State's procedures implementing HIV services pursuant to §96.128, if considered a designated State;

(9) A description of estimates of non-Federal dollars to be spent for early intervention services relating to HIV, if a designated State, and tuberculosis services for the fiscal year covered by the application, as well as the amounts actually spent for such services for the two previous fiscal years;

(10) For fiscal year 1993, a detailed description of the State's revolving fund for establishment of group homes for recovering substance abusers pursuant to §96.129 and, for subsequent years, any revisions to the program;

(11) A detailed description of State procedures implementing §96.131 relating to treatment services for pregnant women;

(12) Unless waived, a description on how the State will improve the process for referrals for treatment, will ensure that continuing education is provided, and will coordinate various activities and services as provided by §96.132;

(13) Statewide assessment of needs as provided in §96.133;

(14) The aggregate State dollar projected expenditures by the principal agency of a State for authorized activities for the fiscal year for which the Block Grant is to be expended, as well as the aggregate obligations or expenditures, when available, for authorized activities for the two years prior to such fiscal year as required by §96.134;

(15) Unless waived, a description of the services and activities to be provided by the State with Block Grant funds consistent with §96.124 for allocations to be spent on services to pregnant women and women with dependent children, alcohol and other drug treatment and prevention, including primary prevention, and any other requirement;

(16) A description of the State procedures to implement §96.132(e) regarding inappropriate disclosure of patient records;

(17) A description of the amounts to be spent for primary prevention in accordance with §96.125;

(18) A description of the amounts to be spent on activities relating to substance abuse such as planning coordination, needs assessment, quality assurance, training of counselors, program development, research and development and the development of information systems;

(19) A description of the State plans regarding purchasing substance abuse services;

(20) A description of how the State intends to monitor and evaluate the performance of substance abuse service providers in accordance with §96.136;

(21) A description of the strategies to be utilized by the State for enforcing the law required by section 96.130(b);

(22) A description of the State's overall goals for Block Grant expenditures, specific objectives under each goal, and the activities the State will carry out to achieve these objectives; and

(23) Such other information as the Secretary may, from time to time, require, consistent with the Paperwork Reduction Act.

(h) The Secretary will approve an application which includes the assurances, the State plan and the report that satisfies the requirements of this part and the relevant sections of the PHS Act. As indicated above, the State is required to provide descriptions of the State's procedures to implement the provisions of the Act and the regulations. Unless provided otherwise by these regulations, the Secretary will approve procedures which are provided as examples in the regulations, or the State may submit other procedures which the Secretary determines to reasonably implement the requirements of the Act.

[58 FR 17070, Mar. 31, 1993, as amended at 61 FR 1508, Jan. 19, 1996]

§96.123 Assurances.

(a) The application must include assurances that:

§ 96.124

(1) the State will expend the Block Grant in accordance with the percentage to be allocated to treatment, prevention, and other activities as prescribed by law and, also, for the purposes prescribed by law;

(2) The activities relating to intravenous drug use pursuant to § 96.126 will be carried out;

(3) The TB services and referral will be carried out pursuant to § 96.127, as well as the early intervention services for HIV provided for in § 96.128, if a designated State;

(4) The revolving funds to establish group homes for recovering substance abusers is in place consistent with the provisions of § 96.129 and the loans will be made and used as provided for by law;

(5) The State has a law in effect making it illegal to sell or distribute tobacco products to minors as provided in § 96.130(b), will conduct annual, unannounced inspections as prescribed in § 96.130, and will enforce such law in a manner that can reasonably be expected to reduce the extent to which tobacco products are available to individuals under the age of 18;

(6) Pregnant women are provided preference in admission to treatment centers as provided by § 96.131, and are provided interim services as necessary and as required by law;

(7) The State will improve the process in the State for referrals of individuals to the treatment modality that is most appropriate for the individuals, will ensure that continuing education is provided to employees of any funded entity providing prevention activities or treatment services, and will coordinate prevention activities and treatment services with the provision of other appropriate services as provided by § 96.132;

(8) The State will submit an assessment of need as required by section 96.133;

(9) The State will for such year maintain aggregate State expenditures by the principal agency of a State for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying for the grant as provided by § 96.134;

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(10) The Block Grant will not be used to supplant State funding of alcohol and other drug prevention and treatment programs;

(11) For purposes of maintenance of effort pursuant to §§ 96.127(f), 96.128(f), and 96.134, the State will calculate the base using Generally Accepted Accounting Principles and the composition of the base will be applied consistently from year to year;

(12) The State will for the fiscal year for which the grant is provided comply with the restrictions on the expenditure of Block Grant funds as provided by § 96.135;

(13) The State will make the State Plan public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during the development of the State Plan and after the submission of the State Plan (including any revisions) to the Secretary as provided by § 1941 of the PHS Act;

(14) The State will for the fiscal year for which the grant is provided, provide for independent peer review to assess the quality, appropriateness, and efficacy of treatment services provided in the State to individuals under the program involved as required by § 96.136;

(15) The State has in effect a system to protect from inappropriate disclosure patient records maintained by the State in connection with an entity which is receiving amounts from the grant;

(16) The State will comply with chapter 75 of title 31, United States Code, pertaining to audits; and

(17) The State will abide by all applicable Federal laws and regulations, including those relating to lobbying (45 CFR Part 93), drug-free workplace (45 CFR 76.600), discrimination (PHS Act Sec. 1947), false statements or failure to disclose certain events (PHS Act Sec. 1946), and, as to the State of Hawaii, services for Native Hawaiians (PHS Act Sec. 1953).

[58 FR 17070, Mar. 31, 1993, as amended at 61 FR 1508, Jan. 19, 1996]

§ 96.124 Certain allocations.

(a) States are required to expend the Block Grant on various activities in certain proportions. Specifically, as to

treatment and prevention, the State shall expend the grant as follows:

(1) not less than 35 percent for prevention and treatment activities regarding alcohol; and

(2) not less than 35 percent for prevention and treatment activities regarding other drugs.

(b) The States are also to expend the Block Grant on primary prevention programs as follows:

(1) Consistent with § 96.125, the State shall expend not less than 20 percent for programs for individuals who do not require treatment for substance abuse, which programs—

(i) educate and counsel the individuals on such abuse; and

(ii) provide for activities to reduce the risk of such abuse by the individuals;

(2) The State shall, in carrying out paragraph (b)(1) of this section—

(i) give priority to programs for populations that are at risk of developing a pattern of such abuse; and

(ii) ensure that programs receiving priority under paragraph (b)(2)(i) of this section develop community-based strategies for prevention of such abuse, including strategies to discourage the use of alcoholic beverages and tobacco products by individuals to whom it is unlawful to sell or distribute such beverages or products.

(c) Subject to paragraph (d) of this section, a State is required to expend the Block Grant on women services as follows:

(1) The State for fiscal year 1993 shall expend not less than five percent of the grant to increase (relative to fiscal year 1992) the availability of treatment services designed for pregnant women and women with dependent children (either by establishing new programs or expanding the capacity of existing programs). The base for fiscal year 1993 shall be an amount equal to the fiscal year 1992 alcohol and drug services Block Grant expenditures and State expenditures for pregnant women and women with dependent children as described in paragraph (e) of this section, and to this base shall be added at least 5 percent of the 1993 Block Grant allotment. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the

base shall be applied consistently from year to year. States shall report the methods used to calculate their base for fiscal year 1992 expenditures on treatment for pregnant women and women with dependent children.

(2) For fiscal year 1994, the State shall, consistent with paragraph (c)(1) of this section, expend not less than five percent of the grant to increase (relative to fiscal year 1993) the availability of such services to pregnant women and women with dependent children.

(3) For grants beyond fiscal year 1994, the States shall expend no less than an amount equal to the amount expended by the State for fiscal year 1994.

(d) Upon the request of a State, the Secretary may waive all or part of the requirement in paragraph (c) of this section if the Secretary determines that the State is providing an adequate level of services for this population. In determining whether an adequate level of services is being provided the Secretary will review the extent to which such individuals are receiving services. This determination may be supported by a combination of criminal justice data, the National Drug and Treatment Units Survey, statewide needs assessment data, waiting list data, welfare department data, including Medicaid expenditures, or other State statistical data that are systematically collected. The Secretary will also consider the extent to which the State offers the minimum services required under § 96.124(e). The Secretary shall approve or deny a request for a waiver not later than 120 days after the date on which the request is made. Any waiver provided by the Secretary shall be applicable only to the fiscal year involved.

(e) With respect to paragraph (c) of this section, the amount set aside for such services shall be expended on individuals who have no other financial means of obtaining such services as provided in § 96.137. All programs providing such services will treat the family as a unit and therefore will admit both women and their children into treatment services, if appropriate. The State shall ensure that, at a minimum, treatment programs receiving funding for such services also provide or arrange for the provision of the following

services to pregnant women and women with dependent children, including women who are attempting to regain custody of their children:

(1) primary medical care for women, including referral for prenatal care and, while the women are receiving such services, child care;

(2) primary pediatric care, including immunization, for their children;

(3) gender specific substance abuse treatment and other therapeutic interventions for women which may address issues of relationships, sexual and physical abuse and parenting, and child care while the women are receiving these services;

(4) therapeutic interventions for children in custody of women in treatment which may, among other things, address their developmental needs, their issues of sexual and physical abuse, and neglect; and

(5) sufficient case management and transportation to ensure that women and their children have access to services provided by paragraphs (e) (1) through (4) of this section.

(f) Procedures for the implementation of paragraphs (c) and (e) of this section will be developed in consultation with the State Medical Director for Substance Abuse Services.

§ 96.125 Primary prevention.

(a) For purposes of § 96.124, each State/Territory shall develop and implement a comprehensive prevention program which includes a broad array of prevention strategies directed *at individuals not identified to be in need of treatment*. The comprehensive program shall be provided either directly or through one or more public or non-profit private entities. The comprehensive primary prevention program shall include activities and services provided in a variety of settings for both the general population, as well as targeting sub-groups who are at high risk for substance abuse.

(b) In implementing the prevention program the State shall use a variety of strategies, as appropriate for each target group, including but not limited to the following:

(1) *Information Dissemination*: This strategy provides awareness and knowledge of the nature and extent of

alcohol, tobacco and drug use, abuse and addiction and their effects on individuals, families and communities. It also provides knowledge and awareness of available prevention programs and services. Information dissemination is characterized by one-way communication from the source to the audience, with limited contact between the two. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

- (i) Clearinghouse/information resource center(s);
- (ii) Resource directories;
- (iii) Media campaigns;
- (iv) Brochures;
- (v) Radio/TV public service announcements;
- (vi) Speaking engagements;
- (vii) Health fairs/health promotion; and
- (viii) Information lines.

(2) *Education*: This strategy involves two-way communication and is distinguished from the Information Dissemination strategy by the fact that interaction between the educator/facilitator and the participants is the basis of its activities. Activities under this strategy aim to affect critical life and social skills, including decision-making, refusal skills, critical analysis (e.g. of media messages) and systematic judgment abilities. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

- (i) Classroom and/or small group sessions (all ages);
- (ii) Parenting and family management classes;
- (iii) Peer leader/helper programs;
- (iv) Education programs for youth groups; and
- (v) Children of substance abusers groups.

(3) *Alternatives*: This strategy provides for the participation of target populations in activities that exclude alcohol, tobacco and other drug use. The assumption is that constructive and healthy activities offset the attraction to, or otherwise meet the needs usually filled by alcohol, tobacco and other drugs and would, therefore, minimize or obviate resort to the latter. Examples of activities conducted

and methods used for this strategy include (but are not limited to) the following:

- (i) Drug free dances and parties;
- (ii) Youth/adult leadership activities;
- (iii) Community drop-in centers; and
- (iv) Community service activities.

(4) Problem Identification and Referral:

This strategy aims at identification of those who have indulged in illegal/age-inappropriate use of tobacco or alcohol and those individuals who have indulged in the first use of illicit drugs in order to assess if their behavior can be reversed through education. It should be noted, however, that this strategy does not include any activity designed to determine if a person is in need of treatment. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

- (i) Employee assistance programs;
- (ii) Student assistance programs; and
- (iii) Driving while under the influence/driving while intoxicated education programs.

(5) Community-Based Process: This strategy aims to enhance the ability of the community to more effectively provide prevention and treatment services for alcohol, tobacco and drug abuse disorders. Activities in this strategy include organizing, planning, enhancing efficiency and effectiveness of services implementation, inter-agency collaboration, coalition building and networking. Examples of activities conducted and methods used for this strategy include (but are not limited to) the following:

- (i) Community and volunteer training, e.g., neighborhood action training, training of key people in the system, staff/officials training;
- (ii) Systematic planning;
- (iii) Multi-agency coordination and collaboration;
- (iv) Accessing services and funding; and
- (v) Community team-building.

(6) Environmental: This strategy establishes or changes written and unwritten community standards, codes and attitudes, thereby influencing incidence and prevalence of the abuse of alcohol, tobacco and other drugs used in the general population. This strategy is divided into two subcategories to

permit distinction between activities which center on legal and regulatory initiatives and those which relate to the service and action-oriented initiatives. Examples of activities conducted and methods used for this strategy shall include (but not be limited to) the following:

- (i) promoting the establishment and review of alcohol, tobacco and drug use policies in schools;
- (ii) technical assistance to communities to maximize local enforcement procedures governing availability and distribution of alcohol, tobacco and other drug use;
- (iii) modifying alcohol and tobacco advertising practices; and
- (iv) product pricing strategies.

§96.126 Capacity of treatment for intravenous substance abusers.

(a) In order to obtain Block Grant funds, the State must require programs that receive funding under the grant and that treat individuals for intravenous substance abuse to provide to the State, upon reaching 90 percent of its capacity to admit individuals to the program, a notification of that fact within seven days. In carrying out this section, the State shall establish a capacity management program which reasonably implements this section—that is, which enables any such program to readily report to the State when it reaches 90 percent of its capacity—and which ensures the maintenance of a continually updated record of all such reports and which makes excess capacity information available to such programs.

(b) In order to obtain Block Grant funds, the State shall ensure that each individual who requests and is in need of treatment for intravenous drug abuse is admitted to a program of such treatment not later than—

(1) 14 days after making the request for admission to such a program; or

(2) 120 days after the date of such request, if no such program has the capacity to admit the individual on the date of such request and if interim services, including referral for prenatal care, are made available to the individual not later than 48 hours after such request.

(c) In carrying out subsection (b), the State shall establish a waiting list management program which provides systematic reporting of treatment demand. The State shall require that any program receiving funding from the grant, for the purposes of treating injecting drug abusers, establish a waiting list that includes a unique patient identifier for each injecting drug abuser seeking treatment including those receiving interim services, while awaiting admission to such treatment. For individuals who cannot be placed in comprehensive treatment within 14 days, the State shall ensure that the program provide such individuals interim services as defined in §96.121 and ensure that the programs develop a mechanism for maintaining contact with the individuals awaiting admission. The States shall also ensure that the programs consult the capacity management system as provided in paragraph (a) of this section so that patients on waiting lists are admitted at the earliest possible time to a program providing such treatment within reasonable geographic area.

(d) In carrying out paragraph (b)(2) of this section the State shall ensure that all individuals who request treatment and who can not be placed in comprehensive treatment within 14 days, are enrolled in interim services and those who remain active on a waiting list in accordance with paragraph (c) of this section, are admitted to a treatment program within 120 days. If a person cannot be located for admission into treatment or, if a person refuses treatment, such persons may be taken off the waiting list and need not be provided treatment within 120 days. For example, if such persons request treatment later, and space is not available, they are to be provided interim services, placed on a waiting list and admitted to a treatment program within 120 days from the latter request.

(e) The State shall require that any entity that receives funding for treatment services for intravenous drug abuse carry out activities to encourage individuals in need of such treatment to undergo such treatment. The States shall require such entities to use outreach models that are scientifically sound, or if no such models are avail-

able which are applicable to the local situation, to use an approach which reasonably can be expected to be an effective outreach method. The model shall require that outreach efforts include the following:

- (1) Selecting, training and supervising outreach workers;
- (2) Contacting, communicating and following-up with high risk substance abusers, their associates, and neighborhood residents, within the constraints of Federal and State confidentiality requirements, including 42 C.F.R. Part 2;
- (3) Promoting awareness among injecting drug abusers about the relationship between injecting drug abuse and communicable diseases such as HIV;
- (4) Recommend steps that can be taken to ensure that HIV transmission does not occur; and
- (5) Encouraging entry into treatment.

(f) The State shall develop effective strategies for monitoring programs compliance with this section. States shall report under the requirements of §96.122(g) on the specific strategies to be used to identify compliance problems and corrective actions to be taken to address those problems.

§96.127 Requirements regarding tuberculosis.

(a) States shall require any entity receiving amounts from the grant for operating a program of treatment for substance abuse to follow procedures developed by the principal agency of a State for substance abuse, in consultation with the State Medical Director for Substance Abuse Services, and in cooperation with the State Department of Health/Tuberculosis Control Officer, which address how the program—

(1) Will, directly or through arrangements with other public or nonprofit private entities, routinely make available tuberculosis services as defined in §96.121 to each individual receiving treatment for such abuse;

(2) In the case of an individual in need of such treatment who is denied admission to the program on the basis of the lack of the capacity of the program to admit the individual, will refer the individual to another provider of tuberculosis services; and

(3) Will implement infection control procedures established by the principal agency of a State for substance abuse, in cooperation with the State Department of Health/Tuberculosis Control Officer, which are designed to prevent the transmission of tuberculosis, including the following:

- (i) Screening of patients;
- (ii) Identification of those individuals who are at high risk of becoming infected; and
- (iii) Meeting all State reporting requirements while adhering to Federal and State confidentiality requirements, including 42 CFR part 2; and

(4) will conduct case management activities to ensure that individuals receive such services.

(b) The State shall develop effective strategies for monitoring programs compliance with this section. States shall report under the requirements of § 96.122(g) on the specific strategies to be used to identify compliance problems and corrective actions to be taken to address those problems. The principal agency, in cooperation with the State Department of Health/Tuberculosis Control Officer, shall also establish linkages with other health care providers to ensure that tuberculosis services are routinely made available. All individuals identified with active tuberculosis shall be reported to the appropriate State official as required by law and consistent with paragraph (a)(3)(iii) of this section.

(c) With respect to services provided for by a State for purposes of compliance with this section, the State shall maintain Statewide expenditures of non-Federal amounts for such services at a level that is not less than an average level of such expenditures maintained by the State for the 2-year period preceding the first fiscal year for which the State receives such a grant. In making this determination, States shall establish a reasonable funding base for fiscal year 1993. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year.

§ 96.128 Requirements regarding human immunodeficiency virus.

(a) In the case of a designated State as described in paragraph (b) of this section, the State shall do the following—

(1) with respect to individuals undergoing treatment for substance abuse, the State shall, subject to paragraph (c) of this section, carry out one or more projects to make available to the individuals early intervention services for HIV disease as defined in § 96.121 at the sites at which the individuals are undergoing such treatment;

(2) for the purpose of providing such early intervention services through such projects, the State shall make available from the grant the amounts prescribed by section 1924 of the PHS Act;

(3) the State shall, subject to paragraph (d) of this section, carry out such projects only in geographic areas of the State that have the greatest need for the projects;

(4) the State shall require programs participating in the project to establish linkages with a comprehensive community resource network of related health and social services organizations to ensure a wide-based knowledge of the availability of these services; and

(5) the State shall require any entity receiving amounts from the Block Grant for operating a substance abuse treatment program to follow procedures developed by the principal agency of a State for substance abuse, in consultation with the State Medical Director for Substance Abuse Services, and in cooperation with the State Department of Health/Communicable Disease Officer.

(b) For purposes of this section, a “designated State” is any State whose rate of cases of acquired immune deficiency syndrome is 10 or more such cases per 100,000 individuals (as indicated by the number of such cases reported to and confirmed by the Director of the Centers for Disease Control for the most recent calendar year for which the data are available).

(c) With respect to programs that provide treatment services for substance abuse, the State shall ensure that each such program participating

in a project under paragraph (a) of this section will be a program that began operation prior to the fiscal year for which the State is applying to receive the grant. A program that so began operation may participate in a project under paragraph (a) of this section without regard to whether the program has been providing early intervention services for HIV disease.

(d) If the State plans to carry out 2 or more projects under paragraph (a) of this section, the State shall carry out one such project in a rural area of the State, unless the requirement is waived. The Secretary shall waive the requirement if the State certifies to the Secretary that:

(1) The rate of cases of acquired immune deficiency syndrome is less than or equal to two such cases per 100,000 individuals in any rural area of the State, or there are so few infected persons that establishing a project in the area is not reasonable; or

(2) There are no rural areas in the State as defined in § 96.121.

(e) With respect to the provision of early intervention services for HIV disease to an individual, the State shall ensure that the entities comply with § 96.137 regarding payment and § 96.135 regarding restrictions on expenditure of grant. The State shall also ensure that such services will be undertaken voluntarily by, and with the informed consent of, the individual, and undergoing such services will not be required as a condition of receiving treatment services for substance abuse or any other services.

(f) With respect to services provided for a State for purposes of compliance with this section, the State shall maintain Statewide expenditures of non-Federal amounts for such services at a level that is not less than the average level of such expenditures maintained by the State for 2-year period preceding the first fiscal year for which the State receives such a grant. In making this determination, States shall establish a reasonable base for fiscal year 1993. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year.

§ 96.129 Revolving funds for establishment of homes in which recovering substance abusers may reside.

(a) The State shall establish and provide for the ongoing operation of a revolving fund as follows:

(1) The purpose of the fund is to make loans for the costs of establishing programs for the provision of housing in which individuals recovering from alcohol and drug abuse may reside in groups of not less than six individuals;

(2) Not less than \$100,000 will be available for the revolving fund;

(3) Loans made from the revolving fund do not exceed \$4,000 and that each such loan is repaid to the revolving fund not later than 2 years after the date on which the loan is made;

(4) Each such loan is repaid by such residents through monthly installments by the date specified in the loan agreement involved;

(5) Such loans are made only to non-profit private entities agreeing that, in the operation of the program established pursuant to the loan—

(i) The use of alcohol or any illegal drug in the housing provided by the program will be prohibited;

(ii) Any resident of the housing who violates such prohibition will be expelled from the housing;

(iii) The costs of the housing, including fees for rent and utilities, will be paid by the residents of the housing; and

(iv) The residents of the housing will, through a majority vote of the residents, otherwise establish policies governing residence in the housing, including the manner in which applications for residence in the housing are approved;

(6) States shall identify and clearly define legitimate purposes for which the funds will be spent, such as first month's rent, necessary furniture (e.g., beds), facility modifications (e.g., conversion of basement into a game room or extra bedrooms), and purchase of amenities which foster healthy group living (e.g., dishwasher);

(7) In managing the revolving fund, the State and the financial entity managing the fund for the State shall abide by all Federal, State and local laws and regulations;

(8) If the State decides to indirectly manage the fund using a private non-profit entity as the fund management group, the State shall establish reasonable criteria for selecting the group, such as qualifications, expertise, experience, and capabilities of the group, and the State shall require that these entities abide by all Federal, State and local laws and regulations;

(9) The State may seek assistance to approve or deny applications from entities that meet State-established criteria;

(10) The State shall set reasonable criteria in determining the eligibility of prospective borrowers such as qualifications, expertise, capabilities, the acceptability of a proposed plan to use the funds and operate the house, and an assessment of the potential borrower's ability to pay back the funds;

(11) The State shall establish a procedure and process for applying for a loan under the program which may include completion of the application, personal interviews and submission of evidence to support eligibility requirements, as well as establish a written procedure for repayment which will set forth reasonable penalties for late or missed payments and liability and recourse for default;

(12) The State shall provide clearly defined written instructions to applicants which lays out timeliness, milestones, required documentation, notification of reasonable penalties for late or missed payments and recourse for default, notification on legitimate purposes for which the loan may be spent, and other procedures required by the State; and

(13) The State shall keep a written record of the number of loans and amount of loans provided, the identities of borrowers and the repayment history of each borrower and retain it for three years.

(b) The requirements established in paragraph (a) of this section shall not apply to any territory of the United States other than the Commonwealth of Puerto Rico.

§ 96.130 State law regarding sale of tobacco products to individuals under age of 18.

(a) For purposes of this section, the term "first applicable fiscal year" means fiscal year 1994, except in the case of any State described in section 1926(a)(2) of the PHS Act, in which case "first applicable fiscal year" means fiscal year 1995. The term "outlet" is any location which sells at retail or otherwise distributes tobacco products to consumers including (but not limited to) locations that sell such products over-the-counter or through vending machines.

(b) The Secretary may make a grant to a State only if the State, for the first applicable fiscal year and subsequent fiscal years, has in effect a law providing that it is unlawful for any manufacturer, retailer, or distributor of tobacco products to sell or distribute any such product to any individual under age 18 through any sales or distribution outlet, including over-the-counter and vending machine sales.

(c) For the first and second applicable fiscal years, the State shall, at a minimum, conduct annually a reasonable number of random, unannounced inspections of outlets to ensure compliance with the law and plan and begin to implement any other actions which the State believes are necessary to enforce the law.

(d) For the third and subsequent fiscal years, the States shall do the following:

(1) The State shall conduct annual, random, unannounced inspections of both over-the-counter and vending machine outlets. The random inspections shall cover a range of outlets (not preselected on the basis of prior violations) to measure overall levels of compliance as well as to identify violations.

(2) Random, unannounced inspections shall be conducted annually to ensure compliance with the law and shall be conducted in such a way as to provide a probability sample of outlets. The sample must reflect the distribution of the population under age 18 throughout the State and the distribution of the

outlets throughout the State accessible to youth.

(e) The State shall annually submit to the Secretary with its application a report which shall include the following:

(1) a detailed description of the State's activities to enforce the law required in paragraph (b) of this section during the fiscal year preceding the fiscal year for which that State is seeking the grant;

(2) a detailed description regarding the overall success the State has achieved during the previous fiscal year in reducing the availability of tobacco products to individuals under the age of 18, including the results of the unannounced inspections as provided by paragraph (d) of this section for which the results of over-the-counter and vending machine outlet inspections shall be reported separately;

(3) a detailed description of how the unannounced inspections were conducted and the methods used to identify outlets;

(4) the strategies to be utilized by the State for enforcing such law during the fiscal year for which the grant is sought; and

(5) the identity of the agency or agencies designated by the Governor to be responsible for the implementation of the requirements of section 1926 of the PHS Act.

(f) Beginning in the second applicable fiscal year, the annual report required under paragraph (e) of this section shall be made public within the State, along with the State plan as provided in section 1941 of the PHS Act.

(g) Beginning with applications for the fourth applicable fiscal year and all subsequent fiscal years, the Secretary will negotiate with the State, as part of the State's plan, the interim performance target the State will meet for that fiscal year and in subsequent years will seek evidence of progress toward achieving or surpassing a performance objective in which the inspection failure rate would be no more than 20% within several years.

(h) Beginning with the second applicable fiscal year and all subsequent fiscal years, the Secretary shall make a determination, before making a Block Grant to a State for that fiscal year,

whether the State reasonably enforced its law in the previous fiscal year pursuant to this section. In making this determination, the Secretary will consider the following factors:

(1) During the first and second applicable fiscal years, the State must conduct the activities prescribed in paragraph (c) of this section.

(2) During the third applicable fiscal year, the State must conduct random, unannounced inspections in accordance with paragraph (d) of this section.

(3) During the fourth and all subsequent applicable fiscal years, the State must do the following:

(i) conduct random, unannounced inspections in accordance with paragraph (d); and

(ii) except as provided by paragraph (h)(4) of this section, the State must be in substantial compliance with the target negotiated with the Secretary under paragraph (g) of this section for that fiscal year.

(4) If a State has not substantially complied with the target as prescribed under paragraph (h)(3)(ii) of this section for any fiscal year, the Secretary, in extraordinary circumstances, may consider a number of factors, including survey data showing that the State is making significant progress toward reducing use of tobacco products by children and youth, data showing that the State has progressively decreased the availability of tobacco products to minors, the composition of the outlets inspected as to whether they were over-the-counter or vending machine outlets, and the State's plan for improving the enforcement of the law in the next fiscal year.

(i) If, after notice to the State and an opportunity for a hearing, the Secretary determines under paragraph (h) of this section that the State has not maintained compliance, the Secretary will reduce the amount of the allotment in such amounts as is required by section 1926(c) of the PHS Act.

(j) States may not use the Block Grant to fund the enforcement of their statute, except that they may expend funds from the primary prevention set-aside of their Block Grant allotment under 45 CFR 96.124(b)(1) for carrying out the administrative aspects of the requirements such as the development

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of the sample design and the conducting of the inspections.

[61 FR 1508, Jan. 19, 1996]

§ 96.131 Treatment services for pregnant women.

(a) The State is required to, in accordance with this section, ensure that each pregnant woman in the State who seeks or is referred for and would benefit from such services is given preference in admissions to treatment facilities receiving funds pursuant to the grant. In carrying out this section, the State shall require all entities that serve women and who receive such funds to provide preference to pregnant women. Programs which serve an injecting drug abuse population and who receive Block Grant funds shall give preference to treatment as follows:

- (1) Pregnant injecting drug users;
- (2) Pregnant substance abusers;
- (3) Injecting drug users; and
- (4) All others.

(b) The State will, in carrying out this provision publicize the availability to such women of services from the facilities and the fact that pregnant women receive such preference. This may be done by means of street outreach programs, ongoing public service announcements (radio/television), regular advertisements in local/regional print media, posters placed in targeted areas, and frequent notification of availability of such treatment distributed to the network of community based organizations, health care providers, and social service agencies.

(c) The State shall in carrying out paragraph (a) of this section require that, in the event that a treatment facility has insufficient capacity to provide treatment services to any such pregnant woman who seeks the services from the facility, the facility refer the woman to the State. This may be accomplished by establishing a capacity management program, utilizing a toll-free number, an automated reporting system and/or other mechanisms to ensure that pregnant women in need of such services are referred as appropriate. The State shall maintain a continually updated system to identify treatment capacity for any such pregnant women and will establish a mechanism for matching the women in need

of such services with a treatment facility that has the capacity to treat the woman.

(d) The State, in the case of each pregnant woman for whom a referral under paragraph (a) of this section is made to the State—

(1) will refer the woman to a treatment facility that has the capacity to provide treatment services to the woman; or

(2) will, if no treatment facility has the capacity to admit the woman, make available interim services, including a referral for prenatal care, available to the woman not later than 48 hours after the woman seeks the treatment services.

(e) Procedures for the implementation of this section shall be developed in consultation with the State Medical Director for Substance Abuse Services.

(f) The State shall develop effective strategies for monitoring programs compliance with this section. States shall report under the requirements of § 96.122(g) on the specific strategies to be used to identify compliance problems and corrective actions to be taken to address those problems.

§ 96.132 Additional agreements.

(a) With respect to individuals seeking treatment services, the State is required to improve (relative to fiscal year 1992) the process in the State for referring the individuals to treatment facilities that can provide to the individuals the treatment modality that is most appropriate for the individuals. Examples of how this may be accomplished include the development and implementation of a capacity management/waiting list management system; the utilization of a toll-free number for programs to report available capacity and waiting list data; and the utilization of standardized assessment procedures that facilitate the referral process.

(b) With respect to any facility for treatment services or prevention activities that is receiving amounts from a Block Grant, continuing education in such services or activities (or both, as the case may be) shall be made available to employees of the facility who provide the services or activities. The States will ensure that such programs

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include a provision for continuing education for employees of the facility in its funding agreement.

(c) The State shall coordinate prevention and treatment activities with the provision of other appropriate services (including health, social, correctional and criminal justice, educational, vocational rehabilitation, and employment services). In evaluating compliance with this section, the Secretary will consider such factors as the existence of memoranda of understanding between various service providers/agencies and evidence that the State has included prevention and treatment services coordination in its grants and contracts.

(d) Upon the request of a State, the Secretary may provide to a State a waiver of any or all of the requirements established in paragraphs (a), (b) and (c) of this section, if the Secretary determines that, with respect to services for the prevention and treatment of substance abuse, the requirement involved is unnecessary for maintaining quality in the provision of such services in the State. In evaluating whether to grant or deny a waiver, the Secretary will rely on information drawn from the independent peer review/quality assurance activities conducted by the State. For example, a State may be eligible for a waiver of the requirement of paragraph (a) of this section if a State already has a well developed process for referring individuals to treatment facilities that can provide to the individuals the treatment modality that is most appropriate for the individuals. The Secretary will approve or deny a request for a waiver not later than 120 days after the date on which the request is made. Any waiver provided by the Secretary for paragraphs (a), (b) and (c) of this section, will be applicable only to the fiscal year involved.

(e) The State is also required to have in effect a system to protect from inappropriate disclosure patient records maintained by the State in connection with an activity funded under the program involved or by any entity which is receiving amounts from the grant and such system shall be in compliance with all applicable State and Federal laws and regulations, including 42 CFR

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part 2. This system shall include provisions for employee education on the confidentiality requirements and the fact that disciplinary action may occur upon inappropriate disclosures. This requirement cannot be waived.

§96.133 Submission to Secretary of Statewide assessment of needs.

(a) The State is required to submit to the Secretary an assessment of the need in the State for authorized activities, both by locality and by the State in general. The State is to provide a broad range of information which includes the following:

(1) The State is to submit data which shows the incidence and prevalence in the State of drug abuse and the incidence and prevalence in the State of alcohol abuse and alcoholism. For fiscal years 1993 through 1996, the State shall submit its best available data on the incidence and prevalence of drug and alcohol abuse and alcoholism. The State shall also provide a summary describing the weakness and bias in the data and a description on how the State plans to strengthen the data in the future.

(2) The State shall provide a description on current substance abuse prevention and treatment activities:

(i) For fiscal year 1993, the State shall provide its best available data on current prevention and treatment activities in the State in such detail as it finds reasonably practicable given its own data collection activities and records.

(ii) For fiscal year 1994 and subsequent years, the State shall provide a detailed description on current prevention and treatment activities in the State. This report shall include a detailed description of the intended use of the funds relating to prevention and treatment, as well as a description of treatment capacity. As to primary prevention activities, the activities must be broken down by strategies used, such as those provided in section 96.125, including the specific activities conducted. The State shall provide the following data if available: the specific risk factors being addressed by activity; the age, race/ethnicity and gender of the population being targeted by the

prevention activity; and the community size and type where the activity is carried out. As to all treatment and prevention activities, including primary prevention, the State shall provide the identities of the entities that provide the services and describe the services provided. The State shall submit information on treatment utilization to describe the type of care and the utilization according to primary diagnosis of alcohol or drug abuse, or a dual diagnosis of drug and alcohol abuse.

(3) The State may describe the need for technical assistance to carry out Block Grant activities, including activities relating to the collection of incidence and prevalence data identified in paragraph (a)(1) of this section.

(4) The State shall establish goals and objectives for improving substance abuse treatment and prevention activities and shall report activities taken in support of these goals and objectives in its application.

(5) The State shall submit a detailed description on the extent to which the availability of prevention and treatment activities is insufficient to meet the need for the activities, the interim services to be made available under sections 96.126 and 96.131, and the manner in which such services are to be so available. Special attention should be provided to the following groups:

- (i) Pregnant addicts;
- (ii) Women who are addicted and who have dependent children;
- (iii) Injecting drug addicts; and
- (iv) Substance abusers infected with HIV or who have tuberculosis.

(6) Documentation describing the results of the State's management information system pertaining to capacity and waiting lists shall also be submitted, as well as a summary of such information for admissions and, when available, discharges. As to prevention activities, the report shall include a description of the populations at risk of becoming substance abusers.

§ 96.134 Maintenance of effort regarding State expenditures.

(a) With respect to the principal agency of a State for carrying out authorized activities, the agency shall for each fiscal year maintain aggregate

State expenditures by the principal agency for authorized activities at a level that is not less than the average level of such expenditures maintained by the State for the two year period preceding the fiscal year for which the State is applying for the grant. The Block Grant shall not be used to supplant State funding of alcohol and other drug prevention and treatment programs.

(b) Upon the request of a State, the Secretary may waive all or part of the requirement established in paragraph (a) of this section if the Secretary determines that extraordinary economic conditions in the State justify the waiver. The State involved must submit information sufficient for the Secretary to make the determination, including the nature of the extraordinary economic circumstances, documented evidence and appropriate data to support the claim, and documentation on the year for which the State seeks the waiver. The Secretary will approve or deny a request for a waiver not later than 120 days after the date on which the request is made. Any waiver provided by the Secretary shall be applicable only to the fiscal year involved. "Extraordinary economic conditions" mean a financial crisis in which the total tax revenue declines at least one and one-half percent, and either unemployment increases by at least one percentage point, or employment declines by at least one and one-half percent.

(c) In making a Block Grant to a State for a fiscal year, the Secretary shall make a determination of whether, for the previous fiscal year or years, the State maintained material compliance with any agreement made under paragraph (a) of this section. If the Secretary determines that a State has failed to maintain such compliance, the Secretary shall reduce the amount of the allotment for the State for the fiscal year for which the grant is being made by an amount equal to the amount constituting such failure for the previous fiscal year.

(d) The Secretary may make a Block Grant for a fiscal year only if the State involved submits to the Secretary information sufficient for the Secretary to make the determination required in

paragraph (a) of this section, which includes the dollar amount reflecting the aggregate State expenditures by the principal agency for authorized activities for the two State fiscal years preceding the fiscal year for which the State is applying for the grant. The base shall be calculated using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year.

§ 96.135 Restrictions on expenditure of grant.

(a) The State shall not expend the Block Grant on the following activities:

- (1) To provide inpatient hospital services, except as provided in paragraph (c) of this section;
- (2) To make cash payments to intended recipients of health services;
- (3) To purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;
- (4) To satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds;
- (5) To provide financial assistance to any entity other than a public or non-profit private entity; or
- (6) To provide individuals with hypodermic needles or syringes so that such individuals may use illegal drugs, unless the Surgeon General of the Public Health Service determines that a demonstration needle exchange program would be effective in reducing drug abuse and the risk that the public will become infected with the etiologic agent for AIDS.

(b) The State shall limit expenditures on the following:

- (1) The State involved will not expend more than 5 percent of the grant to pay the costs of administering the grant; and
- (2) The State will not, in expending the grant for the purpose of providing treatment services in penal or correctional institutions of the State, expend more than an amount prescribed by section 1931(a)(3) of the PHS Act.

(c) Exception regarding inpatient hospital services.

(1) With respect to compliance with the agreement made under paragraph (a) of this section, a State (acting through the Director of the principal agency) may expend a grant for inpatient hospital-based substance abuse programs subject to the limitations of paragraph (c)(2) of this section only when it has been determined by a physician that:

- (i) The primary diagnosis of the individual is substance abuse, and the physician certifies this fact;
- (ii) The individual cannot be safely treated in a community-based, nonhospital, residential treatment program;
- (iii) The Service can reasonably be expected to improve an individual's condition or level of functioning;
- (iv) The hospital-based substance abuse program follows national standards of substance abuse professional practice; and

(2) In the case of an individual for whom a grant is expended to provide inpatient hospital services described above, the allowable expenditure shall conform to the following:

- (i) The daily rate of payment provided to the hospital for providing the services to the individual will not exceed the comparable daily rate provided for community-based, nonhospital, residential programs of treatment for substance abuse; and
- (ii) The grant may be expended for such services only to the extent that it is medically necessary, i.e., only for those days that the patient cannot be safely treated in a residential, community-based program.

(d) The Secretary may approve a waiver for construction under paragraph (a)(3) of this section within 120 days after the date of a request only if:

- (1) The State demonstrates to the Secretary that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available;
- (2) The State has carefully designed a plan that minimizes the costs of renovation or construction;
- (3) The State agrees, with respect to the costs to be incurred by the State in carrying out the purpose of the waiver, to make available non-Federal contributions in cash toward such costs in

an amount equal to not less than \$1 for each \$1 of Federal funds provided under the Block Grant; and

(4) The State submits the following to support paragraphs (b)(1), (2) and (3), of this section:

(i) Documentation to support paragraph (d)(1) of this section, such as local needs assessments, waiting lists, survey data and other related information;

(ii) A brief description of the project to be funded, including the type(s) of services to be provided and the projected number of residential and/or outpatient clients to be served;

(iii) The specific amount of Block Grant funds to be used for this project;

(iv) The number of outpatient treatment slots planned or the number of residential beds planned, if applicable;

(v) The estimate of the total cost of the construction or rehabilitation (and a description of how these estimates were determined), based on an independent estimate of said cost, using standardized measures as determined by an appropriate State construction certifying authority;

(vi) An assurance by the State that all applicable National (e.g., National Fire Protection Association, Building Officials and Codes Administrators International), Federal (National Environmental Policy Act), State, and local standards for construction or rehabilitation of health care facilities will be complied with;

(vii) Documentation of the State's commitment to obligate these funds by the end of the first year in which the funds are available, and that such funds must be expended by the end of the second year (section 1914(a)(2) of the PHS Act);

(viii) A certification that there is public support for a waiver, as well as a description of the procedure used (and the results therein) to ensure adequate comment from the general public and the appropriate State and local health planning organizations, local governmental entities and public and private-sector service providers that may be impacted by the waiver request;

(ix) Evidence that a State is committed to using the proposed new or rehabilitated substance abuse facility for

the purposes stated in the request for at least 20 years for new construction and at least 10 years for rehabilitated facilities;

(x) An assurance that, if the facility ceases to be used for such services, or if the facility is sold or transferred for a purpose inconsistent with the State's waiver request, monies will be returned to the Federal Government in an amount proportionate to the Federal assistance provided, as it relates to the value of the facility at the time services cease or the facility sold or transferred;

(xi) A description of the methods used to minimize the costs of the construction or rehabilitation, including documentation of the costs of the residential facilities in the local area or other appropriate equivalent sites in the State;

(xii) An assurance that the State shall comply with the matching requirements of paragraph (d)(3) of this section; and

(xiii) Any other information the Secretary may determine to be appropriate.

§ 96.136 Independent peer review.

(a) The State shall for the fiscal year for which the grant is provided, provide for independent peer review to assess the quality, appropriateness, and efficacy of treatment services provided in the State to individuals under the program involved, and ensure that at least 5 percent of the entities providing services in the State under such program are reviewed. The programs reviewed shall be representative of the total population of such entities.

(b) The purpose of independent peer review is to review the quality and appropriateness of treatment services. The review will focus on treatment programs and the substance abuse service system rather than on the individual practitioners. The intent of the independent peer review process is to continuously improve the treatment services to alcohol and drug abusers within the State system. "Quality," for purposes of this section, is the provision of treatment services which, within the constraints of technology,

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resources, and patient/client circumstances, will meet accepted standards and practices which will improve patient/client health and safety status in the context of recovery. "Appropriateness," for purposes of this section, means the provision of treatment services consistent with the individual's identified clinical needs and level of functioning.

(c) The independent peer reviewers shall be individuals with expertise in the field of alcohol and drug abuse treatment. Because treatment services may be provided by multiple disciplines, States will make every effort to ensure that individual peer reviewers are representative of the various disciplines utilized by the program under review. Individual peer reviewers must also be knowledgeable about the modality being reviewed and its underlying theoretical approach to addictions treatment, and must be sensitive to the cultural and environmental issues that may influence the quality of the services provided.

(d) As part of the independent peer review, the reviewers shall review a representative sample of patient/client records to determine quality and appropriateness of treatment services, while adhering to all Federal and State confidentiality requirements, including 42 CFR Part 2. The reviewers shall examine the following:

- (1) Admission criteria/intake process;
- (2) Assessments;
- (3) Treatment planning, including appropriate referral, e.g., prenatal care and tuberculosis and HIV services;
- (4) Documentation of implementation of treatment services;
- (5) Discharge and continuing care planning; and
- (6) Indications of treatment outcomes.

(e) The State shall ensure that the independent peer review will not involve practitioners/providers reviewing their own programs, or programs in which they have administrative oversight, and that there be a separation of peer review personnel from funding decisionmakers. In addition, the State shall ensure that independent peer review is not conducted as part of the licensing/certification process.

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(f) The States shall develop procedures for the implementation of this section and such procedures shall be developed in consultation with the State Medical Director for Substance Abuse Services.

§ 96.137 Payment schedule.

(a) The Block Grant money that may be spent for §§ 96.124(c) and (e), 96.127 and 96.128 is governed by this section which ensures that the grant will be the "payment of last resort." The entities that receive funding under the Block Grant and provides services required by the above-referenced sections shall make every reasonable effort, including the establishment of systems for eligibility determination, billing, and collection, to:

(1) Collect reimbursement for the costs of providing such services to persons who are entitled to insurance benefits under the Social Security Act, including programs under title XVIII and title XIX, any State compensation program, any other public assistance program for medical expenses, any grant program, any private health insurance, or any other benefit program; and

(2) Secure from patients or clients payments for services in accordance with their ability to pay.

APPENDIX A TO PART 96—UNIFORM DEFINITIONS OF SERVICES

1. Adoption Services
2. Case Management Services
3. Congregate Meals
4. Counseling Services
5. Day Care Services—Adults
6. Day Care Services—Children
7. Education and Training Services
8. Employment Services
9. Family Planning Services
10. Foster Care Services for Adults
11. Foster Care Services for Children
12. Health Related and Home Health Services
13. Home Based Services
14. Home Delivered Meals
15. Housing Services
16. Independent and Transitional Living Services
17. Information and Referral Services
18. Legal Services
19. Pregnancy and Parenting Services for Young Parents
20. Prevention and Intervention Services
21. Protective Services for Adults
22. Protective Services for Children
23. Recreational Services
24. Residential Treatment Services